IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

CRIMINAL JAIL APPEAL NO. 158 OF 2005.

Naib Singh son of Inder Singh, resident of. Village Mala Rashadi, P.S. Naraingarh, district Ambala (Punjab)..
… Appellant.

Versus

State of Uttarakhand. …. Respondent.

Sri Anil Kumar Joshi, learned Amicus Curiae, for the appellant.
Sri Sudhir Chaudhary, Brief holder for the State.

HON'BLE DHARAM VEER, J.

1. This is criminal Jail Appeal against the judgment and order dated 12.09.2004 passed by Addl. Sessions Judge/III FTC, Nainital in Criminal Special Trial No. 119 of 1995, whereby the Addl Sessions Judge has convicted the appellant under section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, hereinafter referred as N.D.P.S.Act) and sentenced him to undergo rigorous imprisonment under section 15© for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, further undergo rigorous imprisonment for a period of one year.

2. Brief facts of the prosecution case, as emerged out from the record, are that on 07.01.1995 the police party comprising of S.I. D.K.Sharma alongwith S.I. P.C. Verma, S.I. Rajbir Sharma, HC Rohtash Singh, constable Hamendra Singh and Constable Net Ram were on patrol duty for maintaining peace and law and order situation in the area of Kashipur. At about 11 a.m. a Mukhbir informed the police party that some persons were sitting at the roadways bus stand

and they had Doda posta in their Holdall and brief cases and were about to go out.Believing this information of the Mukhbir to be true, the police party proceeded alongwith Mukhbir towards the roadways bus stand. On reaching the bus stand, the Mukhbir pointed out towards the persons who were sitting there. The police party surrounded them and apprehended them and asked their names and addresses. They were also asked whether they want to be searched before a Gazetted Officer but they replied that they were caught by them, hence they expressed their desire to be searched by the police personnel. The police party apprehended the accused/appellant and search of the accused/appellant Naib Singh was taken On being made search of the accused/appellant the police recovered 50 Kg of Doda posta from his possession. A recovery memo (Ext.Ka. 1) was prepared on the spot. A copy of the same was given to the accused. Thereafter the police party returned to the police station and lodged the report against the accused and prepared a chick FIR which is Ext.Ka. 2 on record. The investigation was handed over to Sri K.R.Sagar, SI. The recovered Doda posta was produced before the trial court. The report of the Chimical Examiner, Agra reveals that the sample was found to be Doda posta. The investigation was conducted by S.I. K.R.Sagar and after completing the investigation he has submitted the charge sheet (Ext.Ka.5).

3. A charge under Section 15 of the N.D.P.S.Act was framed against the appellant. The appellant denied the charge and claimed trial.

4. The prosecution, in order to support its case, examined PW 1 SSI Dinesh Kumar Sharma and PW. 2 SI Jagdish Chandra Tewari.

5. learned Addl. Sessions Judge, Nainital on his appreciation of the evidence on record, held that the prosecution had proved its case against the appellant beyond reasonable doubt and sentenced him to undergo RI for ten years and a fine of Rs. 1,00,000/- and in default of payment of fine, further undergo RI for one year under section15(c) of N.D.P.S.Act.

6. I have heard Sri Anil Kuamr Joshi, learned Amicus Curiae for the appellant and Sri Sudhir Chaudhary, brief holder. for the State.

7. The learend Amicus Curiae assailed the conclusion of the learned trial Judge and argued that the mandatory provision of Section 50 of the N.D.P.S.Act has not been complied with. This argument of the learned Amicus Curiae is not tenable for the reason that the appellant was informed first of his right to be searched before a Gazeted Officer or a Magistrate and when the appellant denied this offer then the appellant was searched and recovered 50 Kg. Doda posta. This fact is also proved by the evidence of PW. 1 SI Dinesh Kumar Sharma. Thus, compliance of Section 50 of N.D.P.S.Act has fully been made.

8. The prosecution has produced two witnesses, namely PW 1 SI Dinesh Kuamr Sharma and PW 2 A.S.I. Jagesh Chandra Tewari. Both the witnesses have categorically stated that on 07.01.1995 they alongwith other police personnel, arrested appellant Naib Singh alongwith six others. On being searched, 50 Kg Doda posta was recovered from his possession for which he has no licence or authority

to keep the same. Both these witnesses were not cross-examined by the appellant. The Court specifically asked the appellant to cross-examine the witnesses. The appellant did not cross-examine PW 1 and PW 2 nor moved any application to provide Amicus Curiae for conducting his case. The appellant is a resident of Punjab and was arrested alongwith six persons at the roadways bus stand and recovered 50 Kg. Doda posta from his possession, hence in my opinion, the appellant has not been falsely implicated in this case by the police.

9. The learned III Addl. Sessions Judge, Nainital has convicted the appellant and sentenced the appellant under section 15 of the N.D.P.S. Act and sentenced the appellant under sub clause (c) of Section 15 of the N.D.P.S. Act. Section 15(c) of the N.D.P.S.Act is reproduced below:

"where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than the years but which may extend to twenty years and shall also be liable to fine which shall not be less then one laks rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees".

10. From the above discussion, I come to the conclusion that the charge against the appellant was rightly found to have been proved beyond doubt by the learned III Addl. Sessions Judge and there are no cogent grounds to interfere with the judgment of conviction and sentence of the appellant. Hence the appeal is liable to be dismissed.

11. The appeal is, therefore, dismissed. The conviction under section 15 of the N.D.P.S. act and sentence passed by the trial court dated 12.09.2004 under section 15(c) of the said Act are maintained. The record of the trial court be sent immediately for compliance.

(Dharam Veer, J)

Dated: 8.03.2007.

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